

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 9242 OF 2007

Sou.Nanda Mohan Manavade ...Petitioners

Versus

Sou.Tarabai Maruti Goikane

and Ors. Respondents

Mr.C.J.Sawant for the petitioners.

Mr.V.A.Thorat for the respondents.

CORAM: S.C.DHARMADHIKARI, J.

14th December, 2007.

P.C. :

1. Mentioned. Not on board.

2. Leave to amend.

3. By consent, the petition is taken up for admission

and disposed off.

4. The urgency according to Mr.C.J.Sawant, learned Senior counsel for the petitioner is that the election of the President is scheduled on 17.12.2007. The impugned order is passed on 13.12.2007. The impugned order restrains the petitioner from participating or voting in the proceedings of the Igatpuri Municipal Council including casting vote at the elections of the President or any other post.

3. With the assistance of Mr.Sawant and Mr.Thorat, learned Senior Counsels appearing for both sides, I have perused the impugned order. The law is well settled that ordinarily pending the election dispute or challenge to the election, it is not permissible for the Election Tribunal or the court to restrain a elected representative from exercising his rights as such and taking part in the proceedings in the house or voting at any elections. There are no exceptional circumstances pointed out for departing from this settled principle, inasmuch as, assuming that the petitioner does not belong to the caste or Reserved

Category that is a matter which is pending scrutiny of the Scrutiny Committee and even the election dispute is pending. If the petitioner is restrained from participating in the proceedings of the house, there is every likelihood of the subject ward being deprived of representation, so also the composition of the house undergoing drastic change. That would cause confusion and chaos. The democratic process cannot be thwarted in this manner. In such circumstances, I do not think that this was a case where the learned judge could have granted the injunction as prayed. The order under challenge is therefore set aside.

4. However, it is directed that any observations in this order will not preclude the Additional District judge from deciding the pending dispute on merits and in accordance with law. Further, these observations would not prevent the caste verification/Scrutiny Committee from discharging its obligations in accordance with law. Petition allowed in the above terms.
